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Adviser for Japan,
Tokyo.

MEMORANDUM OF CONVERSATION

Subject: Informal Discussions on the United States Standard Draft Treaty of Friendship, Commerce and Navigation

Participants: For the Ministry of Foreign Affairs:

Mr. Morio YUKAWA, Director, Economic Affairs Bureau
Mr. Kenichi OTABE, Vice Director, Economic Affairs Bureau
Mr. Haruki MORI, Chief, First Section, Economic Affairs Bureau
Mr. Takeshi KANEMATSU, Secretary, First Section, Economic Affairs Bureau
Mr. Kay MIYAGAWA, Secretary, First Section, Economic Affairs Bureau
Mr. Mikizo NAGAI, Chief, Sixth Section, Economic Affairs Bureau

For the Office of the United States Political Adviser; Japan:

Mr. Jules BASSIN, Legal Attache
Mr. Dudley G. SINGER, Commercial Attache
Mr. Robert W. ADAMS, Second Secretary

Place: Office of the United States Political Adviser for Japan, Tokyo.

Date: Tuesday, April 22, 1952. EIGHTEENTH INFORMAL MEETING

PROTOCOL

Mr. Yukawa suggested that a reservation be put in the Protocol to the effect that the most-favored-nation treatment prescribed in the FCN Treaty would not apply to such special rights and privileges as might be given to Koreans in Japan. He added that as long as Koreans now in Japan continue to reside in Japan, they may be granted certain special rights and privileges which they had acquired as a result of their previous Japanese nationality. These special privileges would pertain to their continued residence in Japan, and to certain property rights and the exercise of certain professions that might not be accorded or permitted to other foreigners. This special treatment was based on the long-standing and unique relationship existing between Japan and Korea,

said Mr. Yukawa, and such special treatment should therefore not come within the purview of the most-favored-nation treatment clause of the FCN Treaty under discussion.

Mr. Adams asked what special rights and privileges would be accorded by Japan to such Korean nationals. Mr. Otabe replied that it was difficult to give precise details at this particular time in as much as Japan was currently negotiating a treaty which would establish the basic relations between the Republic of Korea and Japan, and which would stipulate these special rights and privileges.

With respect to property rights, Mr. Otabe made reference to the reservation in paragraph 2, Article VII, on the exploitation of natural resources. He stated that some Korean nationals presently in Japan are owners of mining rights acquired during their previous status as Japanese nationals. The continued holding of such mining rights by these Korean nationals, he added, should not establish a basis for invoking the most-favored-nation principle.

Mr. Kanamatsu then stated that the highlights of the problem involving persons of Korean origin who are to lose their Japanese nationality and acquire Korean nationality on the coming into effect of the Treaty of Peace are: (1) Koreans who were in Japan before September 2, 1945, will require no application to be permitted to remain in Japan as permanent residents; (2) such Koreans will not be subject to normal deportation procedures and will be deported only after consultation between the appropriate Japanese and Korean authorities; (3) Koreans who are engaged in professional activities which are normally reserved to Japanese nationals will be permitted to continue in these professions; and (4) Koreans who, on the day of the coming into force of the Treaty of Peace with Japan, possess property rights of a kind which would normally not be allowed to come under alien ownership, will be permitted to retain such property rights.

Mr. Otabe observed that this problem was not only related to Koreans but also to other former Japanese nationals who would lose their nationality as a result of the peace Treaty. He added that while this question might again be raised in the future with reference to other aliens of former Japanese nationality, the problem of Koreans of ex-Japanese nationality was a special importance at this time in view of the current negotiations on a treaty and various agreements between Korea and Japan.

Mr. Singer asked whether the Japanese Government believed that this extension of special rights and privileges to Koreans of ex-Japanese nationality would be of a temporary nature.

Mr. Nagai replied that the Japanese Government was of the opinion that these special rights and privileges would not be extended to the Korean heirs of the individuals to whom these were presently granted. He added that residence and similar rights would be lost by such Koreans of ex-Japanese nationality upon their departure from Japan (other than on a short visit abroad). With respect to property rights, including

mining, these could be held only during the lifetime of the Korean to whom the right was extended. His Korean heir, stated Mr. Nagai, not being of ex-Japanese nationality, could not inherit property rights normally forbidden to aliens.

Mr. Bassin stated that he understood that all Koreans in Japan would automatically lose their Japanese nationality and acquire Korean nationality as a result of the treaty currently being negotiated by the two countries. He added that he further understood that the reservation mentioned by Mr. Yukawa was designed to ensure that Japan would be free to extend the special rights and privileges contemplated without violating the most-favored-nation standard of the FCN Treaty with the United States.

Mr. Yukawa stated that this understanding was correct, and he then proposed that the following be added to the Protocol of the FCN Treaty under discussion:

> "The most-favored-nation treatment prescribed in this Treaty shall not apply with respect to those rights and privileges which persons of Korean origin acquired in Japan as Japanese nationals, and which they may be permitted by Japan to retain after they have acquired the nationality of the Republic of Korea."

Mr. Adams said that this proposed reservation would be made of record tentatively for the purpose of these informal discussions as paragraph 7 of the Protocol, and that it would be referred to the Department of State for its consideration.

Mr. Yukawa then asked for an expression of the views of the American side with reference to an Article in the 1911 Treaty between Japan and the United States concerning military service. He stated that there was interest on the Japanese side in the possible inclusion of a provision in the FCN Treaty under discussion which would exempt the nationals of either party from service in the armed forces of the other, as well as from contributions in money or in kind in lieu of such military service.

Mr. Adams replied that it is no longer the policy of the United States to enter into treaty undertakings which would grant exemptions from military service, and that the treaties most recently negotiated by the United States therefore contain no military service provisions. He added that the United States could not enter into such an undertaking in view of the action taken by the United States Congress in 1951 in amending the Selective Service Act so as to make all aliens entered for permanent residence subject to the military draft.

Mr. Otabe stated that Japan was interested primarily in the individuals who went to the United States as treaty traders and

students, who should not, in his opinion, be subject to the Selective Service Act. He added that it was believed by the Japanese side that individuals entering the United States for a temporary and limited stay, including treaty traders and students, were not subject to the military draft laws of the United States.

Mr. Adams explained that all individuals, including students and treaty traders, entering the United States for other than a short visit were considered to be "aliens entered for permanent residence" for the purpose of the Selective Service Act, and were required to register under that Act. Japanese students and treaty traders would, upon their registration, normally be placed in one of the categories exempting or deferring an individual from actual drafting into the military service. Foreign students, for example, are normally deferred from military service by their classification under category 4 (b) of the Selective Service Act. Mr. Adams further stated that this same classification, or some other also implying deferment from service, would probably be used in the case of Japanese treaty traders. He explained that each local draft board in the United States might apply different standards, and that it was not impossible for one board to classify an individual for military service, while another board in like circumstances would grant a deferment. A registrant under the Selective Service Act, however, has the right to demand a review of his case with a view to his reclassification. In the case of a foreign student or treaty trader such a request for deferment or for appropriate reclassification under the Act might properly be submitted through his diplomatic or consular representative. Mr. Adams added that he understood that the review authorities concerned with Selective Service administration were quite liberal in their interpretation of the various classifications, and that it was anticipated that any bona fide student or treaty trader would be so classified upon his registration that he would not normally be subject to military service.

Mr. Yukawa then referred to Article VII of the GATT, and stated that it was believed that a provision of this type might properly be included in the FCN Treaty. He stated that, in the absence of a standard for determination of the value of goods for customs purposes and a criterion for its application, it would be possible to set a value on goods that would have the effect of unreasonable restrictions on their importation.

Mr. Otabe added that Article XXIV of the Japanese draft FCN Treaty, which had previously been discussed in December, 1951 between the American and Japanese representatives, had been drafted along the lines of Article VII of the GATT. This proposed article would establish that the actual value (i.e., "the price at which, at a time and place determined by legislation on the part of the importing country, and in the ordinary course of trade, such or like article is sold or offered for sale under fully competitive conditions") of goods would be used as the basis for customs valuation, rather than the value of merchandise of national origin or any arbitrary or fictitious value.

Mr. Singer stated that the United States position was that the GATT principle that valuation be based on actual rather than arbitrary values was a sound one. He pointed out that Article VII of the GATT was, however, being applied provisionally (under the Protocol of Provisional Application) only "to the fullest extent not inconsistent with existing legislation". He added that a number of changes in United States customs valuation laws would be necessary to bring them into full conformity with the GATT article, and that a general multilateral settlement might be the appropriate medium for any negotiated changes.

Mr. Adams added that United States customs valuation is based on the "American selling price" principle, the abolition of which has been opposed by the United States Congress. The latter, however, has under consideration a bill designed to remove many complexities of current customs procedures which tend to impede the importation of certain merchandise without actually contributing to the tariff protection of American industry. Mr. Adams added that the Department of State might be willing to consider some kind of general formula stressing the willingness of the two Parties to consult together about problems susceptible of administrative solution arising in the customs valuation field. Such a general formula could be expressed most appropriately in an exchange of notes. Mr. Adams further stated that a practicable proposal for an exchange of notes along these lines, if formulated by the Japanese side, could be referred to the Department of State for its consideration. He pointed out, however, that the United States was not in a position to deal with this subject in an FCN Treaty in view of the fact that the "American selling price" principle is a feature of United States customs valuation procedures.

Mr. Yukawa replied that he understood the position of the United States on this point, and that he would inform the appropriate agencies of the Japanese Government of the comments made by the American side.

Mr. Otabe then stated that there were a few more questions concerning Articles discussed at previous meetings. He added that the Japanese side would be ready within a few days to discuss these points, and that he believed two or three additional meetings would suffice for this purpose. Mr. Otabe then stated that after these additional meetings were concluded - possible within the first week of May - the Japanese representatives would refer various pending questions to the Government agencies concerned. This period of consultation, he added, would require no more than three weeks, after which time the final review meetings of the present round of informal discussions could be held.

Mr. Bassin stated that it was his understanding that these final review meetings - which would therefore probably begin late in May or early in June - were for the purpose of clarifying any pending questions, as well as for identifying points for negotiation during the forthcoming formal meetings.

Mr. Yukawa stated that this was also his understanding. He proposed that no definite date be set for the next meeting, and it was agreed that the Japanese representatives would inform Mr. Adams as soon as it was possible to hold the next meeting, probably in about ten days' time (about May 2, 1952).

/s/ M. Yukawa

Morio Yukawa
Director
Economic Affairs Bureau
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/s/ Frank A. Waring

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